



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding pursuant to section 38.1 of the *Residential Tenancy Act* (the “*Act*”) and dealt with an Application for Dispute Resolution filed by the Tenant for a monetary order for the return of a security deposit and to recover the filing fee.

The Tenant submitted a signed Proof of Service Tenant Notice of Direct Request Proceeding which declares that the Tenant served the Landlord with the Notice of Dispute Resolution Proceeding and supporting documents by registered mail on September 10, 2021. In support, the Tenant provided a copy of a date-stamped Canada Post receipt containing the tracking number and an image of an envelope bearing a registered mail label with the same tracking number. Pursuant to sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have received these documents on September 15, 2021, five days after they were mailed.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?
2. Is the Tenant entitled to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant submitted the following relevant evidentiary material:

- A copy of a signed residential tenancy agreement for a tenancy commencing on January 1, 2019, indicating a monthly rent of \$2,562.50, a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00;
- A copy of a type-written Notice to Move Out dated May 31, 2021 which included the Tenant's forwarding address in writing and notice of the Tenant's intention to end the tenancy effective "June 31, 2021";
- A copy of a Proof of Service Tenant Notice of Forwarding Address for Return of Security and/or Pet Damage Deposit confirming service of the Tenant's forwarding address by email on June 1, 2021; and
- A copy of a Tenant's Direct Request Worksheet dated August 18, 2021 confirming that the Tenant paid a security deposit of \$1,250.00 and authorized the Landlord to deduct \$120.00 but that the Landlord returned only \$730.00 to the Tenant. The Direct Request Worksheet indicates that the tenancy ended on July 31, 2021.

Analysis

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposits in full or make an application for dispute resolution claiming against the deposits.

Section 38(6) of the *Act* states that if the landlord does not return the deposits or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposits.

I have reviewed all documentary evidence and I find that the Tenant paid a security deposit in the amount of \$1,250.00 as indicated in the tenancy agreement and the Tenant's Direct Request Worksheet. I also accept that the Tenant authorized the Landlord to retain \$120.00 from the security deposit but that the Landlord returned only \$730.00 to the Tenant. I also accept that the full amount of the pet damage deposit was returned to the Tenant.

I accept the following declarations made by the Tenant on the Tenant's Direct Request Worksheet:

- The Tenant has not provided consent for the Landlord to keep more than \$120.00 from the security deposit;
- There are no outstanding monetary orders against the Tenant for this tenancy; and
- The Tenant has not extinguished their right to the deposits in accordance with sections 24(1) and 36(1) of the *Act*.

I accept the Tenant's statement on the Tenant's Direct Request Worksheet that the tenancy ended on July 31, 2021, which is consistent with the date the date Notice of Move Out was provided to the Landlord. I accept that the vacancy date provided on the Notice to Move Out – June 31, 2021 – was a clerical error.

In accordance with sections 88 of the *Act* and sections 43 and 44 of the *Residential Tenancy Regulation*, I find that the Landlord is deemed to have received the Tenant's forwarding address in writing on June 4, 2021, three days after it was sent to the Landlord via email.

I accept the evidence before me that the Landlord failed to return the balance of the security deposit to the Tenant and did not file an Application for Dispute Resolution requesting to retain the balance of the security deposit by August 15, 2021, within the fifteen days after the date the tenancy ended in accordance with section 38(1) of the *Act*.

Based on the foregoing, I find that the Landlord must pay the Tenant double the amount of the security deposit.

Policy Guideline #17 provides examples to assist when calculating the amount due to a tenant. In this case, I find that Example C is most like the current circumstances:

Example C: A tenant paid \$400 as a security deposit. The tenant agreed in writing to allow the landlord to retain \$100. The landlord returned \$250 within 15 days of receiving the tenant's forwarding address in writing. The landlord retained \$50 without written authorization.

The arbitrator doubles the amount that remained after the reduction authorized by the tenant, less the amount actually returned to the tenant. In this example, the amount of the monetary order is \$350 (\$400 - \$100 = \$300 x 2 = \$600 less amount actually returned \$250).

[Reproduced as written.]

Applying the calculation set out in Example C, I find the Tenant is entitled to a monetary award for double the security deposit in the amount of \$1,530.00, which has been calculated as follows:

$$(\$1,250.00 - \$120.00) \times 2 = \$2,260.00$$

$$\$2,260.00 - \$730.00 = \$1,530.00$$

Having been successful, I find the Tenant is also entitled to recover the \$100.00 filing fee paid to make the application.

Conclusion

Pursuant to sections 38 and 67 of the *Act*, I grant the Tenant a monetary order in the amount of \$1,630.00 for the return of double the security deposit and in recovery of the filing fee. The order must be served on the Landlord. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 27, 2021

Residential Tenancy Branch